

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ROGELIO MONTES, et al.,

Plaintiffs,

v.

CITY OF YAKIMA, et al.,

Defendants

NO: 12-CV-3108-TOR

ORDER RE: PLAINTIFFS' MOTION
FOR COSTS AND ATTORNEYS'
FEES

BEFORE THE COURT is Plaintiffs' Motion for Award of Costs and Reasonable Attorneys' Fees (ECF No. 147). This matter was submitted for consideration without oral argument. The Court has reviewed the briefing and the record and files herein, and is fully informed.

BACKGROUND

Plaintiffs filed a complaint on August 22, 2012, alleging that the electoral system in the city of Yakima, Washington, violated Section 2 of the Voting Rights Act, 52 U.S.C. § 10301. ECF No. 1. On August 22, 2014, the Court granted Plaintiffs' motion for summary judgment and ordered the parties to jointly file a

1 proposed remedial districting plan. ECF No. 108. The parties did not come to
2 agreement on a districting plan and submitted opposing plans. ECF Nos. 113; 117.
3 On February 17, 2015, the Court issued a Final Injunction evaluating the proposed
4 plans and adopting Plaintiffs' plan as the only plan which effectively remedied the
5 Section 2 violation. ECF No. 143. Plaintiffs now move the Court for an award of
6 attorneys' fees in the amount of \$2,473,358.00 and costs and expenses in the
7 amount of \$404,261.19. ECF Nos. 147; 155; 166. Defendants have objected to the
8 reasonableness of these amounts. ECF No. 158.

9 DISCUSSION

10 In an action to enforce the Voting Rights Act "the court, in its discretion,
11 may allow the prevailing party . . . a reasonable attorney's fee, reasonable expert
12 fees, and other reasonable litigation expenses as part of the costs." 52 U.S.C.
13 § 10310(e). The parties do not dispute that Plaintiffs are the prevailing party in
14 this matter, nor that an award of fees and costs is appropriate.

15 I. Attorneys' Fees

16 In calculating the reasonableness of attorneys' fees, the Ninth Circuit uses
17 the "lodestar" method, which involves multiplying the number of hours reasonably
18 expended on the litigation by a reasonable hourly rate. *Camacho v. Bridgeport*
19 *Fin., Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). When determining the
20 reasonableness of the attorney's proposed hourly rate, the district court looks to

1 hourly rates prevailing in the relevant legal community for similar work performed
2 by attorneys of comparable skill, experience, and reputation. *Ingram v. Oroudjian*,
3 647 F.3d 925, 928 (9th Cir. 2011) (per curiam). The “relevant legal community” is
4 generally the forum in which the district court sits. *Gates v. Deukmejian*, 987 F.2d
5 1392, 1405 (9th Cir. 1992). When determining the reasonableness of the hours
6 expended, a district court should exclude hours that are “excessive, redundant, or
7 otherwise unnecessary” and must provide a “concise but clear” explanation of its
8 reasons for the fee award. *Id.* at 1397, 1398 (quoting *Hensley v. Eckerhart*, 461
9 U.S. 424, 434 (1983)). “By and large, the district court should defer to the winning
10 lawyer’s professional judgment as to how much time he or she was required to
11 spend on the case.” *Ryan v. Editions Ltd. West*, ___ F.3d ___, Nos. 12-17810, 13-
12 15061, 2015 WL 2365954, at *6 (9th Cir. May 19, 2015) (brackets omitted)
13 (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008)).

14 “Although in most cases, the lodestar figure is presumptively a reasonable
15 fee award, the district court may, if circumstances warrant, adjust the lodestar to
16 account for other factors which are not subsumed within it.” *Camacho*, 523 F.3d at
17 978 (internal quotation marks and citation omitted). The district courts are guided
18 by the following non-exclusive *Kerr* factors: (1) the time and labor required; (2)
19 the novelty and difficulty of the questions involved; (3) the skill required to
20 perform the legal service properly; (4) the preclusion of other employment by the

1 attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is
2 fixed or contingent; (7) time limitations imposed by the client or the
3 circumstances; (8) the amount involved and the results obtained; (9) the
4 experience, reputation, and ability of the attorneys; (10) the ‘undesirability’ of the
5 case; (11) the nature and length of the professional relationship with the client; and
6 (12) awards in similar cases. *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67, 70
7 (9th Cir. 1975); *see Jordan v. Multnomah Cnty.*, 815 F.2d 1258, 1264 n.11 (9th
8 Cir. 1987) (noting that the district court need not address every *Kerr* factor).

9 “The factors enunciated by [the Ninth Circuit] in *Kerr* were intended to
10 provide district courts with guidance in making the determination of the number of
11 hours reasonably expended on litigation and the reasonable hourly rate.” *Chalmers*
12 *v. City of L.A.*, 796 F.2d 1205, 1211 (9th Cir. 1986). Thus, once the court
13 calculates the initial lodestar figure, “the district court may consider other factors
14 in determining whether to adjust the fee upward or downward.” *Id.* at 1212 (citing
15 *Hensley*, 461 U.S. at 434).¹ Where the Court reduces the requested fees by a
16

17 ¹ Although several *Kerr* factors may be relevant to determine whether to adjust a
18 fee award after the initial lodestar calculation, “[t]he Supreme Court has noted . . .
19 that the *Kerr* factors are largely subsumed within the initial calculation of
20 reasonable hours expended at a reasonable hourly rate, rather than the subsequent

significant amount, it should “provide a specific articulation of its reasons for reducing the award.” *Costa v. Comm’r of Soc. Sec. Admin.*, 690 F.3d 1132, 1135, 1136 (9th Cir. 2012).

Here, Plaintiffs request a total fee award of \$2,473,358.00. ECF No. 166 at 11. The following chart represents Plaintiffs’ requested hours and hourly rates for each attorney and paralegal:

Name	Position	Requested Rate	Requested Hours ²
Joaquin Avila	Consulting Expert in Voting Rights Act	\$725.00	24.4
Moffatt McDonald	Consulting Expert in Voting Rights Act	\$450.00	73.4
Sarah Dunne	Legal Director, ACLU, Washington State	\$420.00	256.3
La Rond Baker	Staff Attorney, ACLU	\$350.00	1666.9
Kevin Hamilton	Partner, Perkins Coie	\$650.00	348.2
William Stafford	Counsel, Perkins Coie	\$485.00	634.5
Noah Purcell	Associate, Perkins Coie	\$400.00	185.5
Ulrike Connelly	Associate, Perkins Coie	\$410.00	302.9

determination of whether to adjust the fee upward or downward.” *Chalmers*, 796 F.2d at 1212 (citing *Hensley*, 461 U.S. at 434 n.9).

² The requested hours include both hours for the underlying litigation as well as hours for pursuing the fee claim. *See* ECF No. 166-1; *Clark v. City of L.A.*, 803 F.2d 987, 992 (9th Cir. 1986) (“[T]ime spent in establishing entitlement to an amount of fees awardable . . . is compensable.”).

1	Abha Khanna	Counsel, Perkins Coie	\$485.00	1289
2	Mica Simpson	Associate, Perkins Coie	\$335.00	122
3	Dominic Caucci	Document Review Attorney	\$125.00	60
4	Rebecca Davidson	Document Review Attorney	\$125.00	51
5	Shaun Franklin	Document Review Attorney	\$125.00	54.2
6	Daryl Huntsinger	Document Review Attorney	\$125.00	52.5
7	Jeannette Ramirez	Document Review Attorney	\$125.00	66
8	Nandini Rao	Document Review Attorney	\$125.00	52.5
9	Jay Smith	Document Review Attorney	\$125.00	66
10	Aaron Valla	Document Review Attorney	\$125.00	68.2
11	Jeffrey Williams	Document Review Attorney	\$125.00	84.5
12	Elva Gonzalez	Paralegal	\$265.00	120.3
13	Kimball Mullins	Paralegal	\$265.00	894.3

ECF Nos. 147-1, 166-1.

Defendants have raised a number of objections to the reasonableness of the hourly rates claimed and to the number of hours worked. ECF No. 158. The Court has thoroughly reviewed the itemized billing and affidavits submitted by Plaintiffs' counsel as well as Defendants' objections. The Court makes the following findings regarding Plaintiffs' proposed fee award.

A. Reasonableness of Hourly Rates

Plaintiffs have requested hourly rates commensurate with rates for attorneys with comparable skill, experience, and reputation in the Seattle, Washington, metropolitan area. ECF Nos. 147 at 9–11; 166 at 3–5. Defendants contend that the Court should award hourly rates commensurate to rates within the Eastern District of Washington. ECF No. 158 at 22–24.

1 “Generally, the relevant community is the forum in which the district court
2 sits.” *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997). “However, rates
3 outside the forum may be used ‘if local counsel was unavailable, either because
4 they are unwilling or unable to perform because they lack the degree of experience,
5 expertise, or specialization required to handle properly the case.’” *Id.* (quoting
6 *Gates*, 987 F.2d at 1405). The party requesting rates from outside the local forum
7 bears the burden of presenting evidence that those rates “are necessary to the
8 enforcement of civil rights cases” in the local forum and that local rates would
9 “preclude the attraction of competent counsel.” *Id.* at 501. Absent such evidence,
10 a request for outside rates “remains too theoretical to warrant departure from the
11 local forum rule.” *Id.*

12 Plaintiffs assert that Seattle rates are appropriate because “Plaintiffs’ counsel
13 is primarily based in Seattle” and “have specialized expertise in political law
14 litigation, including Voting Rights Act litigation.” ECF No. 147 at 10. Plaintiffs
15 also argue that Seattle rates are appropriate because Defendants themselves
16 secured counsel from Seattle. *Id.* at 11. Finally, Plaintiffs contend that they “are
17 not aware of any attorneys practicing in Yakima with prior Sections 2 experience”
18 and that “this case presented an issue unpopular in Yakima that likely would have
19 deterred local counsel.” *Id.*

1 These reasons do not support a departure from the general rule that the Court
2 should apply the reasonable rates of the local forum. First, the facts that
3 Defendants retained counsel in Seattle and that Plaintiffs have experience in the
4 area of civil rights litigation are irrelevant to the Court's initial analysis of whether
5 non-forum rates should be used. The Court's inquiry begins with examining the
6 availability of counsel *within* the forum before turning outward. *See Barjon*, 132
7 F.3d at 501 (“[P]laintiffs must only prove the unavailability of counsel *within* the
8 local forum in order to justify the use of outside counsel.” (emphasis in original)).

9 Second, while Plaintiffs assert they are not aware of any Yakima attorneys
10 with prior Section 2 experience, they have not provided the Court with evidence
11 that qualified attorneys were not available anywhere in the local forum. Plaintiffs
12 must “prove the unavailability of counsel within the local forum in order to justify
13 the use of outside counsel.” *Id.* (emphasis omitted); *see also Moreno*, 534 F.3d at
14 1111 (“In making the award, the district court must strike a balance between
15 granting sufficient fees to attract qualified counsel to civil rights cases, and
16 avoiding a windfall to counsel. The way to do so is to compensate counsel at the
17 prevailing rate in the community for similar work; no more, no less.” (internal
18 citations omitted)).

19 Plaintiffs have submitted a total of ten affidavits in support of their fee
20 request. ECF Nos. 148–154, 167–169. The only reference to the availability of

1 counsel within the forum is Sarah Dunne’s statement that, “In retaining Perkins
2 Coie as cooperating counsel, I determined that this litigation would require a
3 special expertise in the Voting Rights Act not found in the local Yakima market.”
4 ECF No. 149 at ¶ 12. This unsupported assertion is insufficient to carry Plaintiffs’
5 burden to show that local counsel was either unable or unwilling to handle the
6 case. Moreover, in response to Plaintiffs’ motion, Defendants have provided the
7 Court with the declaration of Thomas D. Cochran, a partner at Witherspoon Kelley
8 Davenport & Toole, who avers that there are several firms in Eastern Washington
9 who could have aptly represented Plaintiffs. ECF No. 160. Plaintiffs have not
10 rebutted that evidence in their reply briefing or affidavits. *See* ECF Nos. 166, 168,
11 169.

12 Plaintiffs have failed to carry their burden to present evidence justifying
13 departure from the local forum rule. *See Barjon*, 132 F.3d at 500–502 (concluding
14 the court did not abuse its discretion in ruling the evidence submitted was
15 insufficient to show competent local counsel was unavailable). As such, the Court
16 will apply the local forum rates. The Court must therefore determine reasonable
17 rates within the local forum for attorneys of comparable skill, experience, and
18 reputation.³

19 ³ Defendants do not object to the rates requested for Plaintiffs’ consulting Voting
20 Rights Act experts, Joaquin Avila and Moffatt McDonald. *See* ECF No. 158 at

1 “[T]he burden is on the fee applicant to produce satisfactory evidence—in
2 addition to the attorney’s own affidavits—that the requested rates are in line with
3 those prevailing in the community for similar services by lawyers of reasonably
4 comparable skill, experience and reputation.” *Blum v. Stenson*, 465 U.S. 886, 904
5 (1984). Plaintiffs, however, have submitted no evidence of what they consider to
6 be reasonable rates within the forum. Defendants have submitted the testimony of
7 Thomas Cochran who opines as to a range of reasonable hourly rates within the
8 forum for each participating attorney and paralegal. ECF No. 160 at 5–7. These
9 ranges are commensurate with the Court’s own knowledge of hourly rates within
10 this forum. *See Ingram*, 647 F.3d at 928 (“[T]he district court did not abuse its
11 discretion either by relying, in part, on its own knowledge and experience . . .”).

12 The Court finds that the requested rate of \$265 an hour for paralegal work is
13 unreasonable and that a rate of \$90 an hour is appropriate within this forum.

14
15 22–24. The Court’s review of the consulting attorneys’ extensive skill, experience
16 and reputation in litigating Voting Rights Act matters supports the amounts
17 requested. *See* ECF No. 150 (McDonald affidavit), 151 (Avila affidavit).

18 Defendants also do not object to the rates requested for Plaintiffs’ document
19 review attorneys. ECF No. 158 at 24. The Court likewise agrees that \$125 an hour
20 for document review is a reasonable rate.

1 The Court finds that Sarah Dunne’s background, years and quality of
2 experience would warrant a reasonable fee in this forum of \$400 an hour. Ms.
3 Dunne is a 1998 law school graduate with federal clerkship experience and
4 significant United States Department of Justice, Civil Rights Division experience.
5 ECF No. 149 at ¶¶ 3–6.

6 The Court finds that La Rond Baker is a 2010 law school graduate and a
7 staff attorney with the ACLU since 2011. *Id.* at ¶¶ 7–8. Given her much more
8 limited background and years of experience, the Court agrees with Mr. Cochran
9 that a reasonable fee in this forum would be \$230 an hour for her services.

10 The Court finds that William “Ben” Stafford is a 2007 law school graduate
11 who joined Perkins Coie that same year. ECF No. 148 at ¶ 2. With less than eight
12 years of experience, a reasonable fee in this forum would be \$280 an hour. Like
13 Mr. Stafford, Abha Khanna has less than eight years of experience, having also
14 graduated from law school in 2007. *Id.* at ¶ 7. She completed two clerkships and
15 joined Perkins Coie in 2010. *Id.* The Court rejects Mr. Cochran’s suggestion that
16 her rate should not be more than \$250 an hour and finds that her reasonable fee
17 would be \$280 an hour in this forum.

18 The Court finds that Kevin Hamilton is a 1985 law school graduate,
19 completed two clerkships, and joined Perkins Coie in 1988. *Id.* at ¶¶ 5–6. His
20 significant experience warrants a reasonable fee of \$400 an hour in this forum.

The Court finds that Noah Purcell and Ulrike Connelly joined Perkins Coie in 2010. *Id.* at ¶¶ 4, 8. Ms. Connelly graduated law school in 2009, but no information was provided concerning Mr. Purcell's graduation. *Id.* at ¶¶ 4, 8. Mr. Purcell completed a federal clerkship. *Id.* at ¶ 4. Mr. Purcell left Perkins Coie within three years and Ms. Connelly has less than five years of experience. *Id.* at ¶¶ 4, 8. The Court rejects Mr. Cochran's suggestion that Mr. Purcell's current position, in part, warrants a higher fee than his past experience would dictate. The Court finds a fee of \$250 an hour to be a reasonable fee in this forum for each attorney.

The Court finds Mica Simpson joined Perkins Coie in 2013 but she did not provide the court with her graduation date, years of experience or any significant information to warrant an increased fee. *Id.* at ¶ 9. With this limited information, the Court finds her reasonable fee would be \$210 an hour.

Thus, the Court finds the following rates are reasonable as evidenced by Mr. Cochran's opinion, the Court's own knowledge of local rates, and the skill, experience, and reputation of each attorney:

Name	Position	Reasonable Rate
Sarah Dunne	ACLU Legal Director, Washington State	\$400.00
La Rond Baker	ACLU staff attorney	\$230.00
Kevin Hamilton	Partner, Perkins Coie	\$400.00
William Stafford	Counsel, Perkins Coie	\$280.00

Noah Purcell	Associate, Perkins Coie	\$250.00
Ulrike Connelly	Associate, Perkins Coie	\$250.00
Abha Khanna	Counsel, Perkins Coie	\$280.00
Mica Simpson	Associate, Perkins Coie	\$210.00

The Court will apply these reasonable hourly rates in its lodestar calculation.

B. Reasonableness of Hours Expended

Defendants contend that Plaintiffs' requested hours are unreasonable. First, Defendants argue Plaintiffs "spent a disproportionate amount of time on the Senate factors," that these factors "had little to no effect on the outcome of the case," and therefore "Plaintiffs should not be rewarded for pursuing this legal strategy." ECF No. 158 at 27–29. Second, Defendants argue that Plaintiffs engaged in "excessive amounts of block-billing in this case [that] warrant a reduction of at least 20%." *Id.* at 31. Third, Defendants argue that Plaintiffs' counsel should not recover fees for pre-litigation investigation and locating clients. *Id.* at 32. Fourth, Defendants argue that Plaintiffs "frequently used double billing and otherwise used multiple attorneys when fewer would suffice." *Id.* at 32–33. Finally, Defendants argue that certain hours spent by a paralegal to teach other members of the legal team how to use a document management system are not recoverable. *Id.* at 34.

The Court should exclude from its initial lodestar calculation "hours that were not reasonably expended." *Gates*, 987 F.2d at 1397 (quoting *Hensley*, 461 U.S. at 433). The Court must review the requested hours and should exclude hours

1 that are “excessive, redundant, or otherwise unnecessary.” *Id.* The fee applicant
2 bears the initial “burden of documenting the appropriate hours expended in the
3 litigation and must submit evidence in support of those hours worked.” *Id.* The
4 party opposing the fee application then “has a burden of rebuttal that requires
5 submission of evidence to the district court challenging the accuracy and
6 reasonableness of the hours charged or the facts asserted by the prevailing party in
7 its submitted affidavits.” *Id.* at 1397–98.

8 As an initial matter, the Court finds Plaintiffs’ summarization of time
9 records sufficiently reliable as evidence of hours spent on this case. Other than
10 objecting to Plaintiffs’ block-billing format, Defendants do not argue differently.
11 Because the Court finds Plaintiffs’ billing format sufficiently detailed, as discussed
12 below, Plaintiffs have met their initial burden. After discussing block-billing, the
13 Court turns to each of Defendants’ arguments as to why certain hours should be
14 reduced or excluded.

15 i. Block Billing

16 Defendants argue that Plaintiffs’ total fee award should be reduced by 20%
17 based upon excessive block billing. ECF No. 158 at 31. “Block billing is the time-
18 keeping method by which each lawyer and legal assistant enters the total daily time
19 spent working on a case, rather than itemizing the time expended on specific
20 tasks.” *Welch v. Metro. Life Ins. Co.*, 480 F.3d 942, 945 n.2 (9th Cir. 2007)

1 (internal quotation marks and citation omitted). Block billing can make it more
2 difficult for a district court to determine whether the time spent on each activity
3 was reasonable and may thereby preclude a fee applicant from carrying the burden
4 to demonstrate the reasonableness of hours expended. *Id.* at 948. As such, a court
5 may, in its discretion, reduce the applicant's proposed hours, provided the court
6 explains why the reduction "fairly balances" the hours that were actually billed in
7 block format. *Id.* The use of block billing does not justify an across-the-board
8 reduction of all hours. *Id.*

9 Defendants contend that a total of 5,191.7 hours, or 81.28% of Plaintiffs'
10 total hours, were entered in block-billing fashion. ECF No. 158 at 31. Based upon
11 this, Defendants request an across-the-board reduction of 20%. *See* ECF Nos. 158
12 at 31; 159-11. As noted above, an across-the-board reduction is not justified, even
13 if more than 80% of Plaintiffs' hours were block-billed.

14 Regardless, the Court concludes that the billing provided by Plaintiffs is not
15 the type of block billing which precludes a fee applicant from demonstrating the
16 reasonableness of hours expended. Block billing is problematic only when it
17 prevents the Court from determining whether the hours expended were reasonable
18 given the tasks accomplished. *See Secalt S.A. v. Wuxi Shenxi Const. Mach. Co.,*
19 *Ltd.*, 668 F.3d 677, 690 (9th Cir. 2012) ("Though a small subset of the billing
20 entries list numerous tasks performed over multi-hour spans, it was not an abuse of

1 discretion for the district court to award the associated fees because counsel “is not
2 required to record in great detail how each minute of his time was expended.”
3 (quoting *Hensley*, 461 U.S. at 437 n.12)); *Sunstone Behavioral Health, Inc. v.*
4 *Alameda Cty. Med. Ctr.*, 646 F. Supp. 2d 1206, 1217 (E.D. Cal. 2009) (“[E]ven
5 where hours are block-billed, a district court should refrain from reducing fees
6 until it first determines whether sufficient detail has been provided so that [the
7 Court] can evaluate what the lawyers were doing and the reasonableness of the
8 number of hours spent on those tasks.” (internal quotation marks omitted)); *see*
9 *also Cintas Corp. v. Perry*, 517 F.3d 459, 469 (7th Cir. 2008) (affirming district
10 court fee award where the “court concluded the invoices were sufficiently detailed
11 to permit adequate review of the time billed to specific tasks”); *Cadena v.*
12 *Pacesetter Corp.*, 224 F.3d 1203, 1215 (10th Cir. 2000) (affirming district court
13 fee award where block billing records sufficiently allowed the court to determine
14 the reasonableness of hours expended).

15 The entries at issue in this case are not unadorned statements of time spent
16 on generic categories of tasks. For example, one entry for 7.2 hours of work
17 describes the tasks accomplished as:

18 Review and provide comments and proofreading revisions regarding
19 Cooper draft reply report; email with legal team regarding same;
20 telephone conference with B. Cooper regarding same; confer with K.
Hamilton and W. Stafford regarding reply report and expert
depositions; confer with U. Connelly regarding research on J. Alford;
telephone conference with D. Engstrom regarding reply report and

1 depositions; email with legal team regarding expert depositions;
2 review letter from opposing counsel regarding same; confer with W.
3 Stafford to review Montes documents and expert communications
with Fraga and Contreras; draft summary email for S. Dunne's review
of Montes documents[.]

4 ECF No. 147-1 at 46 (entry # 667). Block billing is unacceptable where 7.2 hours
5 of work is, for example, described simply as, “working on *Montes* case” or
6 “reviewing documents and conferring with experts.” Plaintiffs’ billing entries are
7 sufficient for the Court to determine whether the hours spent are reasonable given
8 the specific list of tasks accomplished.

9 Moreover, Defendants do not point to any particular portion of these detailed
10 entries to which they object (other than the broad categories of objections
11 discussed herein). Given that it is not necessary to parse out a particular task and
12 the time it took to perform that task, the Court can determine whether the total
13 hours expended to accomplish each detailed list of tasks was reasonable. As such,
14 the billing provided here is sufficient for Plaintiffs to carry their burden to
15 demonstrate that the hours expended were reasonable.

16 ii. Senate Factors

17 Defendants argue that the time Plaintiffs’ counsel spent developing evidence
18 and argument related to the so-called “Senate factors” was disproportionate to their
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20

1 “minimal importance” in resolving the merits of this case.⁴ ECF No. 158 at 8–9.
2 By Defendants’ calculations, Plaintiffs spent over half their billing time on these
3 factors. *Id.* at 8. Defendants object to a full award of fees for this work because
4 the Court and Plaintiffs both agreed during the summary judgment litigation that
5 the Senate factors held little weight at that phase of the proceedings compared to
6 the importance attributed to the three *Gingles* factors. *Id.* at 9, 27–31. Thus,
7 Defendants request an across-the-board 30% reduction in hours. ECF Nos. 158 at
8 31; 159-11.

9 This matter has not been a simple, run-of-the-mill case. Litigation in this
10 case has been highly contested at all points. Both sides spent considerable time
11 developing facts as well as preparing legal arguments and counter-arguments.
12 Defendants now request the Court to conclude that, in hindsight, the Plaintiffs
13 acted unreasonably in preparing an evaluation of the Senate factors, including
14 allegations of discrimination and unresponsiveness. The Court will not engage in
15 such *post hoc* reasoning. *See Dennis v. Chang*, 611 F.2d 1302, 1308 (9th Cir.
16 1980) (“[A]lthough hindsight might suggest that fewer hours were needed, the time
17 actually spent was reasonable and reflected good legal judgment, particularly
18

19 ⁴ See *Thornburg v. Gingles*, 478 U.S. 30, 36–37, 44–45 (1986), for discussion on
20 the relevance of the Senate factors in Section 2 litigation.

1 because plaintiffs were never assured of early success.” (internal quotation marks
2 omitted)); *see also Berkla v. Corel Corp.*, 302 F.3d 909, 927 (9th Cir. 2002)
3 (Sedwick, J., concurring in part and dissenting in part) (“[A] court ought not to
4 [rely] on prior negotiations and hindsight to determine whether to cut off the award
5 of fees lest those with meritorious claims be dissuaded from pursuing them.”).

6 Instead, the Court evaluates whether Plaintiffs were acting reasonably at the
7 time they pursued and developed their legal theory. *Gingles* expressly
8 incorporated the Senate factors as a relevant aspect of Section 2 claims. 478 U.S.
9 at 36–37, 44–45. These factors would likely have comprised a good portion of the
10 evidence presented had the case proceeded to trial. Whether or not the Senate
11 factors would actually become the dispositive issue in this case, it was reasonable
12 for Plaintiffs to thoroughly prepare this aspect of the litigation. *See Guam Soc’y of*
13 *Obstetricians & Gynecologists v. Ada*, 100 F.3d 691, 700 (9th Cir. 1996)
14 (“[A]lthough it may be easy, in hindsight, to tout this as an easy case, plaintiffs
15 cannot be faulted for their thoroughness under the circumstances.” (footnotes
16 omitted)). It was not obvious before the summary judgment litigation that the
17 Senate factors would hold less weight compared to the three *Gingles* factors, nor
18 was a legal theory involving their evaluation wholly without merit. As such, there
19 is no reason to conclude the Plaintiffs were pursuing a frivolous or otherwise
20 unreasonable litigation strategy. *Cf. C.W. v. Capistrano Unified School Dist.*, 784

1 F.3d 1237, 1245–1246 (9th Cir. 2015). The Court therefore concludes that the
2 time Plaintiffs expended developing the Senate factors was reasonable.⁵

3 iii. Pre-litigation Investigation

4 Defendants argue that compensation for fees and costs for pretrial
5 investigation is unwarranted, “especially . . . given that the viability of a Section 2
6 claim can be easily evaluated using publicly available documents.” ECF No. 158
7 at 32. Defendants also argue that “[i]t was unnecessary for Plaintiffs to devote
8 multiple attorneys over the course of several years to investigating a potential suit
9 against the City.” *Id.*

10 The fees provision of the Voting Rights Act does not expressly allow nor
11 disallow recovery of pre-litigation costs of investigation in preparation of filing a
12 suit. *See* 52 U.S.C. § 10310(e) (allowing recovery of “reasonable litigation
13 expenses”). However, as the Supreme Court has recently observed, “some of the
14 services performed before a lawsuit is formally commenced by the filing of a
15 complaint are performed ‘on the litigation,’” and therefore “[t]he fact that some of

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17 ⁵ This conclusion encompasses Defendants’ arguments that it was unreasonable for
18 Plaintiffs to retain two experts who evaluated certain Senate factors. ECF No. 158
19 at 11. The Court concludes that the retention of these experts was likewise
20 reasonable given the circumstances of this case.

1 the claimed fees accrued before the complaint was filed is inconsequential.” *Ray*
2 *Haluch Gravel Co. v. Cent. Pension Fund of Int’l Union of Operating Eng’rs &*
3 *Participating Eng’rs*, 134 S. Ct. 773, 782–83 (2014); *see also Dishman v. UNUM*
4 *Life Ins. Co. of Am.*, 269 F.3d 974, 987 n.51 (9th Cir. 2001) (“[A]ttorneys’ fees for
5 work done on a lawsuit prior to filing of the lawsuit are recoverable.”).

6 Furthermore, Federal Rule of Civil Procedure 11(b) requires litigants to ensure that
7 all presentations to the Court, including those in the complaint, have evidentiary
8 support “formed after an inquiry reasonable under the circumstances.” Fed. R.
9 Civ. P. 11(b). Thus, a reasonable pre-litigation inquiry into the factual basis for
10 Plaintiffs’ Section 2 claims is actually required by the federal rules of procedure.

11 Plaintiffs may recover reasonable fees and expenses for pre-litigation work
12 that was “both useful and of a type ordinarily necessary to advance the . . .
13 litigation in question.” *Ray Haluch Gravel Co.*, 134 S. Ct. at 783. “Investigation,
14 preliminary legal research, drafting of demand letters, and working on the initial
15 complaint are standard preliminary steps toward litigation.” *Id.* Plaintiffs may
16 also recover for reasonable expenses incurred “associated with the development of
17 the theory of the case,” *id.*, as well as for “conferences with clients . . . and other
18 reasonable efforts directed toward the filing of the litigation.” *Dishman*, 269 F.3d
19 at 988.

1 Plaintiffs' complaint was filed on August 22, 2012. ECF No. 1. Defendants
2 object to 203 hours of fees and \$989.46 in expenses incurred prior to this filing.
3 ECF No. 158 at 32. The Court has reviewed these hours and costs and makes the
4 following conclusions. Voting Rights Act litigation requires an extensive factual
5 investigation involving expert analysis of demographics and electoral histories, as
6 well as the relevant Senate factors. Plaintiffs' engagement of experts to collect and
7 analyze data relevant to these points—whether publicly accessible or not—was
8 reasonable. Plaintiffs' efforts spent identifying witnesses and developing
9 testimonial evidence in advance of filing a properly supported complaint were
10 reasonable. All fees relating to communication between counsel regarding the pre-
11 filing investigation and planned legal strategy are reasonable, as are hours spent
12 researching and drafting demand letters⁶ and the complaint. Plaintiffs' pre-
13 litigation costs for legal research (ECF No. 147-2 at 7), long-distance telephone
14 charges (ECF No. 147-2 at 8), and travel (ECF No. 147-2 at 31–32) are also
15 reasonable.⁷

16
17 ⁶ The Court includes in this category all correspondence with the city of Yakima
18 regarding requests for the city to alter its unconstitutional election practices.

19 ⁷ Defendants have not clearly identified the \$989.46 of costs to which they object.
20 The Court has reviewed the entirety of the requested costs, ECF No. 147-2, and

1 Defendants have only raised one specific objection to Plaintiffs' pre-
2 litigation investigation: 90.7 hours which were spent "trying to locate a client."
3 ECF No. 158 at 32. The Court has reviewed the itemized hourly pre-litigation
4 fees. ECF No. 147-1 at 2–12. Plaintiffs have identified hours spent performing
5 community outreach to identify and meet with potential plaintiffs and witnesses.
6 Given the nature of this lawsuit, which involves the effects of an unconstitutional
7 voting system upon an entire minority group, Plaintiffs' counsel spent a reasonable
8 amount of time reaching out to and meeting with the Latino community to identify
9 those who were adversely affected by the system and those who had factual
10 information relating to those adverse effects.

11 Voting Rights Act litigation not only requires extensive factual
12 development, but it involves political processes that move at a relatively slow pace.
13 Defendants' unsupported assertions that Plaintiffs' pre-litigation investigation was
14 unreasonable, ECF No. 158 at 32, are not sufficient to demonstrate that the fees
15 and costs incurred in the two years leading up to the filing of the complaint in this
16 matter were unreasonable. *See Gates*, 987 F.2d at 1397–98 ("The party opposing
17 the fee application has a burden of rebuttal that requires submission of evidence to
18

19 found pre-litigation expenses arise only in these three categories and in the expert
20 fees discussed previously.

1 the district court challenging the reasonableness of the hours charged”). The
2 Court’s independent review of the fees and costs indicates that these expenses
3 were, in fact, reasonable.

4 iv. Duplicative Billing and Overstaffing

5 Defendants object to a number of entries for fees for tasks “that could have
6 been performed by one attorney (*e.g.*, defending a deposition) but [were]
7 performed by two or more.” ECF No. 158 at 32. Specifically, Defendants object
8 to the fact that “Plaintiffs almost always had multiple attorneys attending or
9 defending depositions, and assigned more than one attorney to attend conference
10 calls with opposing counsel and hearings before this Court.” *Id.* at 33. Defendants
11 also object to entries they characterize as representing redundant work—“work that
12 probably required more than one attorney (*e.g.*, a legal strategy meeting) but
13 involved excessive numbers of attorneys.” *Id.* at 32. In this category, Defendants
14 specifically object to “62 weekly conference calls that usually involved three or
15 more members of Plaintiffs’ legal team” as well as to “involving multiple attorneys
16 in fact witness interviews and excessive numbers of attorneys reviewing the same
17 document.” *Id.* at 33. Defendants contend these two categories combined warrant
18 a 15% across-the-board reduction in the hours Plaintiffs request. *Id.* at 33.

19 “The court may reduce the number of hours awarded because the lawyer
20 performed unnecessarily duplicative work, but determining whether work is

1 unnecessarily duplicative is no easy task.” *Moreno*, 534 F.3d at 1112. As the
2 Ninth Circuit has recognized, “sometimes, ‘the vicissitudes of the litigation
3 process’ will require lawyers to duplicate tasks.” *Costa*, 690 F.3d at 1136 (quoting
4 *Moreno*, 534 F.3d at 1113). Consequently, “[f]indings of duplicative work should
5 not become a shortcut for reducing an award without identifying just why the
6 requested fee was excessive and by how much.” *Id.* (quoting *Moreno*, 534 F.3d at
7 1113).

8 Similarly, while a court “should not hesitate to discount hours if it sees signs
9 that a prevailing party has overstaffed a case,” “[g]iven the complexity of modern
10 litigation, the deployment of multiple attorneys is sometimes an eminently
11 reasonable tactic Effective preparation and presentation of a case often
12 involve the kind of collaboration that only occurs when several attorneys are
13 working on a single issue.” *Gay Officers Action League v. Puerto Rico*, 247 F.3d
14 288, 297 (1st Cir. 2001); accord *McGrath v. Cnty. of Nevada*, 67 F.3d 248, 255
15 (9th Cir. 1995) (“We have also recognized that the participation of more than one
16 attorney does not necessarily constitute an unnecessary duplication of effort.”
17 (internal quotation marks omitted)). As such, “[c]ourts must exercise judgment
18 and discretion, considering the circumstances of the individual case, to decide
19 whether there was unnecessary duplication.” *Democratic Party of Wash. v. Reed*,
20 388 F.3d 1281, 1286–87 (9th Cir. 2004) (internal quotation marks omitted).

1 Some of Plaintiffs' time entries do indicate that more than one attorney
2 participated in work that could, strictly-speaking, be accomplished by a single
3 attorney, such as reviewing draft documents, interviewing witnesses, and
4 participating in depositions. However, given the circumstances of this case—its
5 legal and factual complexity, as well as its high-stakes and contentious nature—the
6 Court concludes that these entries nevertheless represent a reasonable expenditure
7 of counsel's time.

8 The Court also concludes that Plaintiffs did not request fees for hours that
9 can be attributed to overstaffing. Plaintiffs have already voluntarily excluded
10 hours for attorneys and paralegals who were not part of the "core litigation team"
11 in this matter. ECF No. 147 at 13–14. The Court will not exclude time spent on
12 weekly conference calls where multiple attorneys discussed litigation strategy. As
13 Defendants' own summation of these calls indicates, they were attended by
14 between two and a maximum of five attorneys, and lasted in general from half-an-
15 hour to an hour. ECF No. 159-9. Keeping a large team of attorneys working
16 efficiently and effectively on the same complex litigation requires regular
17 coordination and discussion, and the Court concludes time spent in these
18 conference calls was reasonably exerted to further the efficient resolution of this
19 matter.
20

1 “By and large, the court should defer to the winning lawyer's professional
2 judgment as to how much time he was required to spend on the case; after all, he
3 won, and might not have, had he been more of a slacker.” *Moreno*, 534 F.3d at
4 1112. Defendants have not articulated specific reasons nor presented evidence
5 demonstrating that the identified tasks were excessively staffed or duplicative—
6 that is, they have not shown, for example, that an extra set of eyes reviewing and
7 revising a pleading or an extra voice evaluating case status and proffering strategy
8 was unreasonable given the specific circumstances in this case. Without such a
9 showing, the Court will not grant the 15% reduction Defendants request. *See*
10 *Nadarajah v. Holder*, 569 F.3d 906, 920 (9th Cir. 2009) (“Indeed, ‘[i]f opposing
11 counsel cannot come up with specific reasons for reducing the fee request that
12 the . . . court finds persuasive, [the court] should normally grant the award in full,
13 or with no more than a haircut [that is, a small, 10 percent reduction].’” (quoting
14 *Moreno*, 534 F.3d at 1112, 1116) (alterations in original)); *McGrath*, 67 F.3d at
15 255 (“[T]he County offered no evidence to support either the reductions or its
16 claim that the hours originally charged were unnecessary. The County may not
17 rely on conclusory challenges to plaintiffs’ evidence. . . . [T]he county did not
18 meet [its] . . . rebuttal burden of providing specific evidence that plaintiffs’ hours
19 were duplicative or inefficient.” (internal quotation marks and citation omitted)).

20 //

1 v. In-House Training

2 Defendants contend that 10.8 hours billed by a paralegal to teach other
3 members of the legal team how to use a document management system is not
4 recoverable because it is an in-house overhead expenditure. ECF No. 158 at 34.
5 “[R]easonable attorney’s fees’ include litigation expenses only when it is ‘the
6 prevailing practice in a given community’ for lawyers to bill those costs separately
7 from their hourly rates.” *Trustees of Const. Indus. & Laborers Health & Welfare*
8 *Trust v. Redland Ins. Co.*, 460 F.3d 1253, 1258 (9th Cir. 2006) (citing *Missouri v.*
9 *Jenkins*, 491 U.S. 274, 286–87 (1989)). Only costs which “are typically charged to
10 paying clients by private attorneys” may be recovered as nontaxable litigation
11 costs. *Grove v. Wells Fargo Fin. Cal., Inc.*, 606 F.3d 577, 580 (9th Cir. 2010).

12 Plaintiffs have not defended these hours in their reply briefing. *See* ECF No.
13 166 at 12 (defending only database hosting expenses, not the hours Ms. Gonzalez
14 spent teaching other members of Plaintiffs’ legal team how to use the system).
15 Whether or not Plaintiffs concede this issue, the Court concludes that in-house
16 training on the use of document management software is not a cost that would be
17 charged to a client by private counsel, but is instead an overhead cost like any
18 other software training that law firms provide their employees from time to time.
19 As such, the Court will deduct the 10.8 hours (of block billing) that included
20

training on the document management system from the requested hours of Elva Gonzalez.

C. Lodestar Calculation

Based upon the foregoing discussion, the Court finds the following hours and hourly rates reasonable:

Name	Position	Rate	Hours
Joaquin Avila	Consulting Expert	\$725.00	24.4
Moffatt McDonald	Consulting Expert	\$450.00	73.4
Sarah Dunne	Legal Director, ACLU	\$400.00	256.3
La Rond Baker	Staff Attorney, ACLU	\$230.00	1,666.9
Kevin Hamilton	Partner, Perkins Coie	\$400.00	348.2
William Stafford	Counsel, Perkins Coie	\$280.00	634.5
Noah Purcell	Associate, Perkins Coie	\$250.00	185.5
Ulrike Connelly	Associate, Perkins Coie	\$250.00	302.9
Abha Khanna	Counsel, Perkins Coie	\$280.00	1,289
Mica Simpson	Associate, Perkins Coie	\$210.00	122
Dominic Caucci	Document Review Attorney	\$125.00	60
Rebecca Davidson	Document Review Attorney	\$125.00	51
Shaun Franklin	Document Review Attorney	\$125.00	54.2
Daryl Huntsinger	Document Review Attorney	\$125.00	52.5
Jeannette Ramirez	Document Review Attorney	\$125.00	66
Nandini Rao	Document Review Attorney	\$125.00	52.5
Jay Smith	Document Review Attorney	\$125.00	66
Aaron Valla	Document Review Attorney	\$125.00	68.2
Jeffrey Williams	Document Review Attorney	\$125.00	84.5
Elva Gonzalez	Paralegal	\$90.00	109.5
Kimball Mullins	Paralegal	\$90.00	894.3

1 Accordingly, the court finds a total initial lodestar amount for fees to be
2 \$1,521,911.50. This amount is presumptively reasonable. *See Camacho*, 523 F.3d
3 at 982.

4 D. Adjustment to Lodestar Calculation

5 Defendants contend that exceptional circumstances warrant further reduction
6 in the fee award. ECF No. 158 at 34–35. Specifically, Defendants argue that
7 Perkin Coie’s pro bono status enabled them to “drive up the costs of litigation
8 without incurring any financial risks,” and that the ACLU bore no financial risk in
9 this matter and therefore had no incentive to manage the case efficiently. *Id.* at 34.
10 Defendants also argue that “Plaintiffs seek to create a chilling effect with the
11 specter of an enormous award of fees and expenses that will discourage local
12 governments from contesting future lawsuits brought under Section 2 or a potential
13 state-law equivalent.” *Id.* at 35. Plaintiffs dispute these contentions, ECF No. 166
14 at 10–11, but have not sought a corresponding increase of the presumptively
15 reasonable lodestar amount. ECF No. 147 at 16–17.

16 “While in most cases the lodestar figure is presumptively reasonable, in rare
17 cases, a district court may make upward or downward adjustments to the
18 presumptively reasonable lodestar on the basis of those factors set out in *Kerr* . . . ,
19 that have not been subsumed in the lodestar calculation.” *Camacho*, 523 F.3d at
20 982 (internal quotation marks and citation omitted); *see also Newman v. Piggie*

1 *Park Enters., Inc.*, 390 U.S. 400, 402 (1968) (holding that a successful civil rights
2 litigant “should ordinarily recover an attorney’s fee unless special circumstances
3 would render such an award unjust”). The Court does not find that the
4 circumstances of this case warrant an adjustment in the lodestar calculation.

5 “The United States Supreme Court clarified long ago that the award of
6 attorneys’ fees under civil rights fee-shifting statutes is not cost-based, and that the
7 award of prevailing market rates—regardless whether the claimant is represented
8 by private counsel or a non-profit legal services organization—should not be
9 viewed as an unjustified ‘windfall’ profit to the attorney.” *Nadarajah*, 569 F.3d at
10 916; *see also Jenkins*, 491 U.S. at 285–86 (“[W]e rejected an argument that
11 attorney’s fees for nonprofit legal service organizations should be based on cost.”).
12 Perkin Coie’s pro bono status and the ACLU’s non-profit status are not relevant to
13 the Court’s determination of reasonable fees in the prevailing market. There is,
14 moreover, no indication beyond Defendants’ unsupported claims that the status of
15 Plaintiffs’ counsel encouraged mismanagement of this case.

16 Finally, the size of the award does not automatically make it unreasonable.
17 *See Cairns v. Franklin Mint Co.*, 292 F.3d 1139, 1158 (9th Cir. 2002). The Court
18 does not agree that the lodestar-calculated award warrants reduction because it
19 “create[s] a chilling effect . . . that will discourage local governments from
20 contesting future lawsuits” ECF No. 158 at 35. An award of fees under the

1 circumstances of this case will not deter local governments from defending
2 constitutionally-sound electoral systems.

3 The city of Yakima chose to litigate this matter tenaciously, defending the
4 entrenched electoral system at every turn. Yakima had every right to do so, but it
5 cannot now be heard to complain that an award commensurate to the time
6 Plaintiffs necessarily spent in response to this vigorous defense was unreasonable.
7 *Cf. City of Riverside v. Rivera*, 477 U.S. 561, 581 n.11 (1986) (“The government
8 cannot litigate tenaciously and then be heard to complain about the time
9 necessarily spent by the plaintiff in response.” (quoting *Copeland v. Marshall*, 641
10 F.2d 880, 904 (D.D.C. 1980) (en banc))). The Court finds no exceptional
11 circumstances in this matter that would warrant an adjustment to the presumptively
12 reasonable lodestar fee award.

13 II. Costs and Expenses

14 In addition to attorneys’ fees, the Voting Rights Act allows the prevailing
15 party to recover reasonable expert fees as well as “other reasonable litigation
16 expenses.” 52 U.S.C. § 10310(e). The party seeking to recover expenses bears the
17 burden of proving they are “reasonable out-of-pocket litigation expenses that
18 would normally be charged to a fee paying client.” *Redland Ins. Co.*, 460 F.3d at
19 1257; *Renfrow v. Draper*, 232 F.3d 688, 695 (9th Cir. 2000).

1 Plaintiffs assert they are entitled to recover \$404,261.19 in costs and
2 expenses (comprised of \$5,256.95 in taxable costs, ECF No. 155, and \$399,004.24
3 in non-taxable expenses, ECF No. 147 at 21). Aside from the broad categories
4 discussed above (*i.e.*, pre-litigation and Senate factor work), Defendants' only
5 objections to Plaintiffs' claimed expenses are the contentions that (1) \$79,858.43
6 sought for "Electronic Discovery Database Hosting" is not recoverable, and (2)
7 \$9,125.00 paid for redistricting plans developed by one of Plaintiffs' experts is not
8 recoverable. ECF Nos. 158 at 16, 34; 159-11 at 3.

9 A. Database Maintenance

10 As discussed briefly above, "'reasonable attorney's fees' include litigation
11 expenses only when it is 'the prevailing practice in a given community' for lawyers
12 to bill those costs separately from their hourly rates." *Redland Ins. Co.*, 460 F.3d
13 at 1258. Expenses which "are typically charged to paying clients by private
14 attorneys" may be recovered as nontaxable litigation costs. *Grove*, 606 F.3d at
15 580. Here, it is Plaintiffs' burden to demonstrate that the contested database
16 hosting is an expense typically paid by paying clients.

17 Neither party has presented binding or persuasive case law discussing the
18 recovery of fees for database hosting. The Ninth Circuit has not examined this
19 issue, but has concluded that charges for computerized research are recoverable
20 only "if separate billing for such expenses is the prevailing practice in the local

1 community.” *Id.* at 581 (internal quotation marks omitted). Plaintiffs have
2 presented no evidence that the prevailing practice is to bill clients separately for
3 database hosting. The record is insufficient for the Court to determine whether
4 database hosting is incorporated into Plaintiffs’ overhead costs, such as normal
5 computer network operation, or whether there were unique costs associated with
6 the database in this matter that would otherwise be charged to a client. As such,
7 Plaintiffs have not met their burden to establish that they are entitled to recovery of
8 this expense. The Court therefore excludes from Plaintiffs’ expenses \$79,858.43
9 for database hosting.

10 B. Expert Fees

11 Defendants object to \$9,125.00 paid to Plaintiffs’ expert, William Cooper.
12 ECF No. 158 at 16. Specifically, Defendants contend that “[b]ecause Mr.
13 Cooper’s initial redistricting plan could not definitively establish the first *Gingles*
14 factor, he had to create constitutionally dubious alternative plans that contained
15 extreme disparities in eligible voter populations among districts.” *Id.* As such,
16 Defendants argue “that Mr. Cooper had earlier opportunities to create a
17 redistricting plan that adequately satisfied the first *Gingles* factor” and Plaintiffs
18 should therefore not recover expert fees incurred for the subsequent plans. *Id.*

19 This argument is without merit. First, Mr. Cooper’s initial plan did satisfy
20 the *Gingles* factors, it is the plan ultimately adopted by the Court. Second, the

1 Court considered all submitted plans at both the summary judgment and remedy
2 stages as illustrative of the potential redistricting of the city. *See, e.g.*, ECF No.
3 108 at 17–19. Mr. Cooper’s subsequent plans provided context for the Court’s
4 resolution of the motion for summary judgment as well as the ultimate districting
5 that was ordered in this case. The production of these subsequent plans was
6 neither frivolous nor unreasonable. Finally, the subsequent plans were developed
7 to rebut Defendants’ own arguments attacking Mr. Cooper’s initial plan. For these
8 reasons, the Court finds the claimed reduction is not warranted.

9 C. Other Expenses

10 Pursuant to Local Rule 54.1, the Clerk of Court taxed costs in the amount of
11 \$3,641.50. ECF No. 181. While the Clerk of Court properly denied certain items
12 as taxable costs under 28 U.S.C. § 1920, they do however constitute reasonable
13 out-of-pocket litigation expenses that the Voting Rights Act allows the prevailing
14 party to recover under 52 U.S.C. § 10310(e). Accordingly, the \$80 in deposition
15 delivery and handling charges, the \$599.35 for William Cooper’s deposition
16 transcript, and the \$936.10 in copying fees which were disallowed as taxable costs,
17 *see* ECF No. 181, shall be allowed as non-taxable expenses.

18 On the other hand, the \$300 in pro hac vice admission fees (ECF No. 147-2
19 at 2) are expenses of the attorneys to practice in this forum, not something the
20 client should bear, and certainly not something the losing party should pay. *Cf.*

1 *Kalitta Air LLC v. Central Texas Airborne System, Inc.*, 741 F.3d 955, 957–58 (9th
2 Cir. 2013) (pro hac vice fees are not taxable as costs under § 1920).

3 The Court's foregoing adjustments result in allowable non-taxable expenses
4 in the amount of \$320,461.26.

5 **ACCORDINGLY, IT IS HEREBY ORDERED:**

6 Plaintiffs' Motion for Attorneys' Fees and Expenses (ECF No. 147) is
7 **GRANTED in part.** Plaintiffs are awarded attorney fees in the amount of
8 \$1,521,911.50, and non-taxable expenses in the amount of \$320,461.26.

9 The District Court Executive is hereby directed to enter this Order and
10 provide copies to counsel. Since the Clerk of Court has taxed costs pursuant to LR
11 54.1,⁸ an Amended Judgment shall be entered for the total amount of attorney fees
12 (\$1,521,911.50), and **total** amount of costs and expenses (\$324,102.76), all
13 accruing statutory interest and the file shall then be **CLOSED**.

14 **DATED** June 19, 2015.



18
19
20

A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge

19 ⁸ The Clerk awarded \$3,641.50 for Plaintiffs' Bill of Costs: \$350.00 for fees of the
20 Clerk, \$3,154.25 for necessary transcripts, and \$137.25 for printing. ECF No. 181.